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Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
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Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	))))))))	CC Docket No. 92-297

COMMENTS OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. ("MCI WorldCom") hereby submits its Comments in response to the Commission's *Sixth Notice of Proposed Rule Making*[1] in the above-referenced proceeding. The Commission sought comment on whether it should allow the ownership eligibility restriction for the Local Multipoint Distribution Service ("LMDS") to sunset on June 30, 2000, or whether it should extend the restriction. MCI WorldCom urges the Commission to extend the restriction on incumbent local exchange carriers ("ILECs") for an additional three years in order to maximize the opportunity for new facilities-based providers to compete against the ILECs – which

[1] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket 92-297, *Sixth Notice of Proposed Rule Making,* FCC 99-379, Released December 13, 1999 (*Sixth Notice*).

still maintain market power.[2] The market situation which existed when the Commission first instituted the LMDS ownership restriction on ILECs has not sufficiently changed to justify removal of the restriction at this time.

On March 13, 1997, the Commission allocated 1,300 MHz of spectrum per basic trading area for LMDS, consisting of the A block (850 MHz at 27.5 GHz, 150 MHz at 29 GHz, and 150 MHz at 31 GHz) and the B block (150 MHz at 31 GHz).[3] At that time, the Commission also imposed an ownership eligibility rule prohibiting ILECs and cable companies from having an attributable interest in the LMDS A block license that overlaps with ten percent or more of the population in their service areas. The Commission concluded that the LMDS spectrum allocation, along with the ownership restriction, would maximize the opportunity for new facilities-based providers to offer local exchange services, multi-channel video programming distribution ("MVPD") services, broadband data services, or all of the above.

In establishing the LMDS spectrum ownership eligibility restriction, the Commission considered the following four factors: (1) the most likely uses for LMDS, (2) the current market structure for local exchange services and MVPD services and whether the incumbent operators in these markets would have the incentive to attempt

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[2] MCI WorldCom does not comment at this time on the question of whether the restriction on cable operators should be extended.

[3] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* CC Docket 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking* 12 FCC Rcd 12545 (1997) (*Second Report*).

to forestall competition in their respective markets, (3) whether an eligibility restriction would be the best means to promote competition, and (4) whether there were efficiencies that would be forfeited if the LMDS spectrum were operated by any class of providers other than the incumbent local exchange carriers and cable operators. Based on these factors, the Commission concluded that the ownership restriction should be implemented, but should be allowed to sunset on June 30, 2000 unless the Commission determined that the ILECs or cable companies continue to have substantial market power in the provision of local telephony or cable TV services, respectively.[4]

MCI WorldCom submits that the Commission should continue to use the same standard set forth in the *Second Report*. In reviewing the four factors, MCI WorldCom submits that the restriction on ILECs should be extended for an additional three years because, among other things, the incumbent operators still maintain market power and continue to have an incentive to forestall competition in their markets.

I. The ILECs Still Maintain A Dominant Position In The Markets Which LMDS Will Serve, And They Have The Incentive To Forestall Competition In Those Markets.

In its *Second Report* in this proceeding, the Commission determined that the most likely uses for the LMDS spectrum were local exchange services and MVPD services.[5] The Commission further concluded that the incumbent local exchange

[4] *Sixth Notice*, at 17, para. 40.

[5] *Second Report*, at 12621 - 23, paras. 170 - 175.

carriers ("ILECs") and cable television operators, respectively, were the dominant providers of these services.

With respect to the local exchange market, MCI WorldCom strongly agrees with the Commission's conclusion in its *Sixth Notice*, that, while the competitors to the ILECs have increased their market penetration since the establishment of the LMDS eligibility restriction, these competitors generally hold only a small share of the local exchange service market. The Commission's *Local Competition: August 1999* report estimates that the ILECs' competitors' share of local service revenues had only reached 3.5% in 1998.[6] The report also stated that "even under the most expansive definition of local service competition ... the ILECs retain 96% of local service revenues."[7] This is due in large part to the fact that the ILECs have hindered competitors' entry into the local markets by refusing to offer reasonably priced unbundled network elements, among other things.

The lack of competition in the local exchange market is also evidenced by the fact that five Bell company Section 271 applications for authorization to provide in-region, interLATA services were rejected by the Commission before Bell Atlantic's application to provide such services in New York was granted on December 22, 1999. In light of the current state of local competition, MCI WorldCom strongly agrees with the Commission's view that the ILECs continue to hold a dominant position in the provision of local exchange services. It is therefore important that the LMDS market

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[6] *Local Competition: August 1999*, Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, August 1999, at 1.

remain competitive and be allowed to develop into a service which will provide effective facilities-based competition in the local exchange market.

As the dominant providers of local exchange service, the ILECs have the incentive to forestall competition in this market in order to maintain their dominant positions. The ILECs already impede entry by competitors into the local exchange service market by limiting access to bottleneck facilities. If the ILECs are allowed to enter the LMDS market, their ability to dominate the local exchange service market will only be enhanced. The LMDS market must remain competitive in order to provide customers with a viable facilities-based alternative to local exchange services furnished by the ILECs. To this end, MCI WorldCom strongly supports the Commission's promotion of competition in this market.

II. The Eligibility Restriction Is The Best Means To Promote Competition, And The Current Standard For Evaluating The Restriction Should Remain In Place.

MCI WorldCom supports maintaining the ownership eligibility restriction on ILECs for an additional three years as the best means of encouraging competition to develop in markets which LMDS will serve. This short-term restriction will allow for the further growth and development of these competitive services. The initial three year restriction allowed these markets to develop more fully; however, due to a number of difficulties encountered in the deployment of LMDS systems, the first LMDS products are just becoming available in the United States. The delays which LMDS licensees have encountered to date include lengthy negotiations and high costs for

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[7] *Id.*

obtaining roof right-of-way agreements, lack of equipment for certain portions of the spectrum, and line-of-sight issues. As a result, additional time is needed for LMDS providers to deploy their systems and services. Furthermore, MCI WorldCom agrees with the Commission that the costs of continuing the restriction are low since the ILECs can acquire licenses in other frequency bands, and no efficiencies would be sacrificed by the eligibility restriction.[8]

MCI WorldCom recommends that the Commission use the standard which is currently in place to determine whether the restriction should sunset on June 30, 2000. The current standard states that the restriction will terminate unless the Commission determines that the ILECs or cable companies continue to have substantial market power in the provision of local telephony or cable TV services.[9] Although the Commission proposes several alternative standards, the current standard should remain in place, as it is the best means of promoting LMDS as a competitive alternative.

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[8] *Second Report*, para. 177.

[9] *Sixth Notice*, para. 40.

III. Conclusion

MCI WorldCom submits that the market situation which existed when the Commission first instituted the LMDS ownership eligibility restriction has not sufficiently changed to justify removal of the restriction on ILECs. In addition, the benefits of maintaining the restriction on ILECs will be significant: maximization of the potential for facilities-based competition in markets which are still dominated by the incumbent service providers. Accordingly, MCI WorldCom requests that the Commission extend the restriction on ILECs for an additional three years, based on the current standard.

Respectfully submitted,

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<u>CERTIFICATE OF SERVICE</u>

I, Billie Rickert, hereby certify that I have this 21st day of January, 2000, sent a copy of the foregoing "Comments" by first-class, U.S. mail, postage prepaid to the following:

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